Grasim Cement Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-26-1997

Reported in : (1997)(96)ELT354TriDel

Appellant : Grasim Cement

Respondent : Commissioner of Central Excise

Judgement :

1. In the impugned order, the Commissioner disallowed Modvat credit amounting to Rs. 95,75,168/-. Being aggrieved by this order of the ld.Commissioner, the appellant has filed the present appeal before us.

2. Shri R. Swaminathan, the ld. Consultant appeared for the Appellant and Shri P.K. Jain, the ld. SDR appeared for the Respondent Commissioner.

3. We have heard the submissions made by both sides. For the sake of easy reference, the items are being dealt with in the order in which they have been dealt with by the ld. Commissioner.

It was contended for the appellants that this item of equipment drives the main equipments for taking part in the manufacture of the final product. The Department, however, contended that this machine or equipment does not directly participate in the process of manufacture of cement. On careful consideration of the submissions made by both sides, we note that Electric Motor is a prime moving force for any machine or plant. A machine cannot function without the electric motor. Thus an electric motor is a machine and hence eligible for Modvat credit as an item of Capital goods.

The appellants relied on this Tribunal's decision in the case of Collector of Central Excise v. Nav Bharat Paper Mills reported in 1996 (86) E.L.T. 501. The contention of the Department was that these panels/boards do not function as an equipment in the actual manufacture of cement. We have, however, seen the decision of this Tribunal in the case of Collector of Central Excise v. Nav Bharat Paper Mills. We note that the Tribunal, in this case, held that Electronic panel board is a device for regulating electric supply both in amperes as well as in voltage. Thus it is an accessory in the form of capital goods essential for proper working of machine and for production of goods and hence eligible for Modvat credit under Rule 57Q of the Central Excise Rules, 1944. We do not see any reason to differ with this decision of the Tribunal. In this view of the matter, we hold that Modvat credit will be eligible on Switch boards and Panels.

The appellants referred to the decision of this Tribunal in the case of Collector of Central Excise v. Nova Udyog Limited, reported in 1996 (88) E.L.T. 532 wherein this Tribunal held that the Electric Wires and Cables are included in the definition of capital goods under Rule 57Q of the Central Excise Rules, 1944. We find that this decision of the Tribunal has not been reversed so far. We follow the ratio of this decision and hold that Modvat credit will be admissible on Wires and Cables.

It was contended before us that this equipment is used in the raw grinding and cement grinding section. However, the appellants could not specifically say as to what precisely is the function of this item. In the absence of this evidence, we do not see any reason to interfere with the order of disallowing Modvat credit on this item and hold that no Modvat credit will be admissible on this item.

It was argued before us that these are items of electronic panel board for regulating the speed of various parts of the machinery and equipment. The Department contended that this item did not participate in the process of manufacture of the final product.

However, we find that this item is covered by the decision of this Tribunal in the case of Collector of Central Excise v. Nav Bharat Paper Mills reported in 1996 (86) E.L.T. 501. We agree with this finding of the Tribunal and hold that Modvat credit will be admissible on Speed Controllers/Transducers/Electrical Speed Switch.

It was contended by the appellants that these are spare parts of transformer. The ld. Consultant for the Appellant referred to the decision of this Tribunal in the case of Collector of Central Excise v. Indian Rayon & Industries Ltd. reported in 1996 (88) E.L.T. 381 wherein this Tribunal held that Transformer is an integral part of Plant and Machinery and hence capital goods. We agree with this decision of the Tribunal. We find that bus ducts/Transformer Chokes Solonoid are not for air conditioning equipment etc. but parts of Transformers and since spares of machine are eligible for Modvat credit as capital goods, we see no reason to deny Modvat credit on these items and hold accordingly.

It was contended before us that parts of PCC/Power Controls are nothing but spare part used in electronic control panel and since we have already held as above that electronic control panels, Switch Boards etc. are eligible to Modvat credit, we hold that Modvat credit will be admissible to parts as PCC/Power Control.

(8) Electric Appliances/Items/Electronic Equipments GI Earthing Strips The appellants have neither clearly indicated the function of these items nor the location of these items in the plant and machinery.

We, therefore, hold that no Modvat credit will be admissible on these items as these items cover a wide variety of goods, which may not be used in plant and machinery.

It was contended before us that static convertor is a process control instrument. It was brought to our notice that this Tribunal in the case of Collector of Central Excise v. Seshasayee Paper Boards Ltd. reported in 1997 (93) E.L.T. 75, held that industrial process control instruments and spares, Static Invertors are capital goods and are eligible for Modvat credit under Rule 57Q of the Central Excise Rules, 1944. We follow the ratio of this decision of the Tribunal and hold that static

Convertor is a process control instrument and, therefore, is eligible for Modvat credit as capital goods.

The appellants relied upon the decision of this Tribunal in the case of Collector of Central Excise v. Nav Bharat Paper Mills Ltd. contending that Capacitors/Insulators are nothing but parts of Switch Boards and Panels. We agree with this contention and hold that Modvat credit will be admissible on Capacitor /Insulators.

This product is nothing but again a part of the Switch Boards/ Panels. We have already held that Switch Boards/Panels and parts thereof are eligible for Modvat credit and, therefore, power control/Mould will be admissibleior Modvat credit.

Insofar as Lead Acid Battery is concerned, it will be eligible for Modvat credit as a capital goods as this is an essential equipment for getting the machinery going in case of failure of the general power supply. Insofar as L.M. Cabinets are concerned, the functioning of this item was not clearly described. We are, therefore, not in a position to accede to the request of the Appellants that this item is part of plant and machinery. We, therefore, do not see any reason to interfere with the order of the Commissioner insofar as L.M. Cabinets are concerned.

It was argued before us that this item is fully covered by the decision of this Tribunal in the case of Collector Central Excise v. Mansurpur Sugar Mills Ltd. reported in 1996 (87) E.L.T. 91; in the case of Collector, Central Excise v. Uttam Industrial Engg. P. Ltd. reported in 1996 (86) E.L.T. 498 and also in the case of Mahindra & Mahindra v. Collector of Central Excise 758. Looking to the decisions of the Tribunal, we do not have any hesitation to follow the ratio of the decisions of the Tribunal and hold accordingly.

Pollution control in the present day circumstances is an essential item for functioning of a plant. We, therefore, hold that these items will be admissible for Modvat credit.

It was contended before us that the Tribunal's judgment in Rathi Ispat Limited reported in 1997 (93) E.L.T. 532 holding that refractory bricks, refractory mortors and fire bricks being basic refractory bricks used for lining of furnace so as to withstand high temperature shall be eligible for Modvat credit. We agree with this decision of the Tribunal and hold that Modvat credit will be admissible on Refractory Bricks/Lining Material etc.

In this category of items, we hold that Modvat credit will be admissible on BIN measuring Instrument/Visco Therm. Unit which are nothing but measuring and testing material. Since the Tribunal in the case of Geep Industrial Syndicate Limited, reported in 1996 (88) E.L.T. 753 held that the process, testing and measuring of various inputs forming the dry cell battery is an essential process in completion and marketing and that from the explanation under Rule 57Q, it is found that a process that is essential for completion of the manufacture of dry cell battery, these will be eligible for Modvat credit. We agree with this finding and hold that Bin Measuring Instrument is a measuring instrument and will be eligible to Modvat credit. No Modvat credit will be admissible on Items (1) and (3) in this category.

The other item in this category is Anti-Mage Filter Assembly. It was contended before us that this item is a type of a Filter for Gypsum and Clinker which is used in the manufacture of cement and since this item is essential for filtering and is used in the process of manufacture, therefore, it should be eligible for Modvat credit as a capital goods. We find force in the argument of the appellants and agree with this contention that Modvat credit will be admissible on this item.

(i) We note that Modvat credit has been denied on Bucket Elevator Pipes and Tubes/Ducts/Metal Bellos Screw. We have already held that material handling equipment will be admissible for Modvat credit as capital goods. We find that the equipment described here is nothing but material handling equipment or parts thereof. We, therefore, see no reason to deny this benefit in view of the case law cited and relied upon by the appellants and mentioned in the item for Material handling equipment.

These items are essentially used in the process of manufacture of cement at various stages. We, therefore, hold that they are capital goods and will be eligible for Modvat credit as capital goods.

These items are also parts of material handling equipment and since we have already held that material handling equipment is a capital goods, spare parts thereof will also be eligible for Modvat credit as items of capital goods.

The function of this item is to control the gases to Raw Grinding Mill. Control of gas is essential in smooth functioning of the Grinding mill and since this function is performed by Damper, we hold that Modvat credit will be admissible on this item.

Similarly, Modvat credit will be admissible to items listed against Sl. No.5,6, 7,8,9,10,12,13 and 14.

In view of the above findings, the impugned order is modified to the extent stated above and the appeal is disposed of accordingly.